

STATE OF NEW MEXICO

BEFORE THE SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT
DEPARTMENT RESOURCE
PROTECTION DIVISION,

Case No. SWB 20-01 (CO)

Complainant,

v.

BL SANTA FE, LLC,

and

HRV HOTEL PARTNERS, LLC

Respondents.

RESPONDENT BL SANTA FE, LLC'S AMENDED ANSWER

Pursuant to 20.1.5.200.A(2) NMAC, Respondent BL Santa Fe, LLC ("BL Santa Fe") submits this Amended Answer to the Administrative Order Requiring Compliance and Assessing a Civil Penalty ("Compliance Order") filed by the New Mexico Environment Department ("NMED") dated January 29, 2020 as follows:

1. BL Santa Fe admits the allegations.
2. BL Santa Fe admits that it is a limited liability company, that it is organized in Delaware, and that it is registered to do business in New Mexico. BL Santa Fe admits, upon information and belief, that Richard Holland was the Managing Member of HRV Santa Fe, LLC, a Georgia limited liability company, the Manager of BL Santa Fe (Holding), LLC, a Delaware limited liability company, the Manager and sole member of BL Santa Fe (Mezz), LLC, a Delaware limited liability company, the Manager and sole member of BL Santa Fe during the time periods identified in the Compliance Order and was the President, Vice President, Secretary and Treasurer of BL Santa Fe, and in those capacities had sole management control over BL Santa Fe and directed the operations and activities of BL Santa Fe, but denies that Richard Holland is the current manager or has any management authority over BL Santa Fe. BL Santa Fe admits, upon information and belief, that Linda L. Aikin was the Registered Agent at the time the

1 Compliance Order was served on BL Santa Fe, but denies that Linda L. Aikin is the current
2 Registered Agent. BL Santa Fe lacks knowledge of the physical address for Richard Holland or
3 Linda L. Aikin, and accordingly denies the allegations regarding their physical address.

4 3. BL Santa Fe admits, upon information and belief, that Richard Holland and
5 Margie Holland are Managers of Respondent HRV Hotel Partners, LLC. BL Santa Fe lacks
6 knowledge of the remaining allegations and accordingly denies them.

7 4. BL Santa Fe admits that it owns and operates Bishops Lodge, and further admits
8 that Respondent HRV Hotel Partners, LLC was the developer in charge of the renovation of
9 Bishops Lodge during the time periods identified in the Compliance Order. BL Santa Fe admits
10 that Bishops Lodge is located at 1297 Bishops Logs Road, Santa Fe, New Mexico 87506. BL
11 Santa Fe affirmatively states that its ownership has recently changed. Juniper BL HoldCo, LLC
12 (“Juniper”) acquired ownership of BL Santa Fe effective October 29, 2021 as part of a
13 restructuring plan approved by the United States Bankruptcy Court for the District of Delaware
14 (*In re BL Santa Fe, LLC, et al.*; Case No. 21-11190). Neither Juniper, nor any of its owners or
15 operators, directed or were otherwise involved in any of the events, occurrences, and transactions
16 that form the basis of the Compliance Order, and the prior owners and operators of BL Santa Fe
17 did not disclose the existence of the Compliance Order prior to Juniper’s acquisition of BL Santa
18 Fe. Accordingly, BL Santa Fe lacks knowledge of the allegations, and denies them in accordance
19 with NMAC 20.1.5.200.A(2)(a) (“where the Respondent/Complainant has no knowledge of a
20 particular factual assertion and so states, the assertion may be denied on that basis.”). BL Santa
21 Fe admits, upon information and belief, the remaining allegations.

22 5. BL Santa Fe admits the allegations as to BL Santa Fe, but lacks knowledge of the
23 remaining allegations and accordingly denies them.

24 6. BL Santa Fe incorporates its response to Paragraph 4 above, states that BL Santa
25 Fe lacks knowledge of the allegations, and accordingly denies them in accordance with NMAC
26 20.1.5.200.A(2)(a) (“where the Respondent/Complainant has no knowledge of a particular factual
27 assertion and so states, the assertion may be denied on that basis.”).
28

1 7. BL Santa Fe admits the allegations accurately set forth the language contained in
2 the cited provision, which speaks for itself.

3 8. BL Santa Fe admits the allegations accurately set forth the language contained in
4 the cited provision, which speaks for itself.

5 9. BL Santa Fe admits the allegations accurately set forth the language contained in
6 the cited provision, which speaks for itself.

7 10. BL Santa Fe admits the allegations accurately set forth the language contained in
8 the cited provision, which speaks for itself.

9 11. BL Santa Fe admits the allegations accurately set forth the language contained in
10 the cited provision, which speaks for itself.

11 12. BL Santa Fe admits the allegations accurately set forth the language contained in
12 the cited provision, which speaks for itself.

13 13. BL Santa Fe admits the allegations accurately set forth the language contained in
14 the cited provision, which speaks for itself.

15 14. BL Santa Fe admits the allegations accurately set forth the language contained in
16 the cited provision, which speaks for itself.

17 15. BL Santa Fe is without knowledge as to the allegations and accordingly denies
18 them.

19 16. BL Santa Fe incorporates its response to Paragraph 4 above, states that BL Santa
20 Fe lacks knowledge of the allegations, and accordingly denies them in accordance with NMAC
21 20.1.5.200.A(2)(a). BL Santa Fe affirmatively asserts that, upon information and belief, the
22 Pueblo of Pojoaque represented to BL Santa Fe that it was authorized to accept for disposal the
23 material described in Paragraph 16 of the Compliance Order, and, consistent with such
24 representations, the Pueblo of Pojoaque provided BL Santa Fe a Certificate of Disposal for
25 “materials from wetlands that included cattails, sludge, damp sludge and rubber liner.” A copy of
26 the Certificate of Disposal is attached as Exhibit 1.

17. BL Santa Fe incorporates its response to Paragraph 4 above, states that BL Santa Fe lacks knowledge of the allegations, and accordingly denies them in accordance with NMAC 20.1.5.200.A(2)(a).

18. BL Santa Fe incorporates its response to Paragraph 4 above, states that BL Santa Fe lacks knowledge of the allegations, and accordingly denies them in accordance with NMAC 20.1.5.200.A(2)(a).

19. BL Santa Fe incorporates its response to Paragraph 4 above, states that BL Santa Fe lacks knowledge of the allegations, and accordingly denies them in accordance with NMAC 20.1.5.200.A(2)(a).

20. BL Santa Fe incorporates its response to Paragraph 4 above, states that BL Santa Fe lacks knowledge of the allegations, and accordingly denies them in accordance with NMAC 20.1.5.200.A(2)(a).

21. BL Santa Fe incorporates its response to Paragraph 4 above, and denies that the civil penalties and payment directives are warranted or appropriate under these circumstances.

22. BL Santa Fe incorporates its response to Paragraph 4 above, and denies that the civil penalties and payment directives are warranted or appropriate under these circumstances.

23. BL Santa Fe incorporates its response to Paragraph 4 above. BL Santa Fe denies that the NMED has authority to order the relief described in Paragraph 24(E). BL Santa Fe denies that it should bear responsibility for the removal and remediation of any improperly disposed waste from the Pueblo of Pojoaque, including any disposals by third parties or disposals accepted by the Pueblo of Pojoaque. BL Santa Fe denies that the civil penalties and payment directives described in Paragraph 24(F) are warranted or appropriate under these circumstances.

24. BL Santa Fe denies all allegations not expressly admitted or otherwise responded to herein.

Affirmative Defenses

1. The civil penalty contained in paragraphs 22 and 23 of the Compliance Order exceeds the NMED's statutory authority and is otherwise not in accordance with law.

2. The civil penalty contained in paragraphs 22 and 23 is arbitrary and capricious and constitutes selective enforcement and application of the SWR because, among other things, the current owners and operators of BL Santa Fe did not direct and were not involved in any of the events, occurrences, and transactions that form the basis of the Compliance Order, and the prior owners and operators of BL Santa Fe did not disclose the existence of the Compliance Order prior to acquisition by the new owners. The civil penalty is further arbitrary and capricious because it is disproportionate to other fines assessed under the SWR.

3. The corrective action contained in paragraph 24(E) is arbitrary and capricious and constitutes selective enforcement and application of the SWR because the corrective action implicates only BL Santa Fe and not: (1) the prior owners and operators of BL Santa Fe who actually directed or otherwise understood the reference violative actions; (2) the Pueblo of Pojoaque, who accepted the referenced material for disposal with knowledge of its origin and character; and (3) other individuals and entities who disposed waste on the referenced Pueblo of Pojoaque lands.

4. The civil penalty contained in paragraphs 22 and 23 constitutes punitive damages that are barred by the Constitution of the State of New Mexico and by the Constitution of the United States as against BL Santa Fe.

5. The civil penalty contained in paragraph 22 is excessive and violates BL Santa Fe's due process of law.

6. The NMED lacks authority to order the relief described in Paragraph 24(E).

7. The NMED cannot establish a prima facie case that the alleged violations are severe enough to support the civil penalty or that the civil penalty is appropriate.

8. BL Santa Fe is not responsible for the Pueblo of Pojoaque's operation of a solid waste facility that does not comply with the New Mexico Solid Waste Act, NMSA 1978, Sections 74-9-1 to -42 ("SWA") or the SWR.

9. BL Santa Fe justifiably relied on the Pueblo of Pojoaque's affirmative representations that it could accept special waste.

10. The penalty and corrective action set forth in the Compliance Order are barred by the doctrine of estoppel.

AFFIRMATION

The information contained herein is to the best of the undersigned's knowledge believed to be true and correct.

WHEREFORE, BL Santa Fe respectfully requests the NMED grant the following relief:

1. Grant BL Santa Fe a Compliance Order Hearing;
2. Dismiss the Compliance Order; and
3. Provide such other relief as may be just and reasonable.

DATED this 24th day of November, 2021.

SNELL & WILMER L.L.P.



By: _____

Gregory J. Marshall
One Arizona Center
400 E. Van Buren
Phoenix, Arizona 85004-2202
Telephone: 602.382.6514
Email: gmarshall@swlaw.com

Counsel for Respondent BL Santa Fe, LLC

CERTIFICATE OF SERVICE

I certify that on this 24th day of November, 2021, a copy of the foregoing Amended Answer was served via first class mail and email to the following:

Gregory Chakalian
New Mexico Environment Department
1190 St. Francis Drive, Santa Fe, New Mexico 87505
Gregory.Chakalian@state.nm.us

Hearing Officer

Madai Corral
Office of Public Facilitation
New Mexico Environment Department
1190 St. Francis Drive, Santa Fe, New Mexico 87505
Madai.corral@state.nm.us

Hearing Clerk

Thomas M. Hnasko
Julie A. Sakura
Hinkle Shanor LLP
P.O. Box 2068
Santa Fe, NM 87504-2068
thnasko@hinklelawfirm.com
jsakura@hinklelawfirm.com

Counsel for Respondent HRV Hotel Partners, LLC

Christopher Atencio
Assistant General Counsel
Legislative & Policy Legal Analyst
New Mexico Environment Department
Office of General Counsel
121 Tijeras Ave. NE
Albuquerque, NM 87102
christopher.atencio@state.nm.us

Counsel for the New Mexico Environment Department

